

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Hometown Online, Inc.)	CSR 5960–E
)	
Petition for Determination of Effective)	
Competition in West Milford Township, New)	
Jersey (NJ0632), Warwick Village, New York)	
(NY1721) and Florida Village, New York)	
(NY1722))	

MEMORANDUM OPINION AND ORDER

Adopted: November 22, 2002

Released: November 25, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Hometown Online, Inc. (“Hometown”) has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in West Milford Township, New Jersey and the Villages of Warwick and Florida, New York (the “Communities”). Hometown claims that it is subject to effective competition and is therefore exempt from cable rate regulation in the Communities because fewer than 30 percent of the households in each franchise area subscribe to Hometown's cable services. Hometown asserts that it is therefore subject to effective competition under the “low penetration” effective competition test set forth in Section 623(1)(1)(A) of the Communications Act of 1934, as amended (“Communications Act”).¹ No opposition to the petition was filed.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴ Based on the record in this proceeding, Hometown has met this

¹ 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b).

² 47 C.F.R. § 76.906.

³ See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 76.907.

burden.

3. Section 623(l) of the Communications Act provides that a cable operator is subject to effective competition, if either one of four tests for effective competition set forth therein is met.⁵ Under the low penetration test, a cable system will be deemed subject to effective competition if less than 30 percent of the households in the system's franchise area subscribe to the system's service.⁶ A finding of effective competition exempts a cable operator from rate regulation and certain other of the Commission's cable regulations.⁷

4. Hometown is a wholly-owned subsidiary of Warwick Valley Telephone Company ("WVT"), a facilities-based, incumbent local exchange carrier. On June 10, 2002, Hometown obtained from the New Jersey Board of Public Utilities a certificate of authority to provide cable service throughout West Milford Township.⁸ Pursuant to a construction timetable set forth in its certificate of authority, Hometown must be capable of serving a specified primary service area ("PSA") within the Township no later than June 10, 2005.⁹ Hometown indicates that this PSA comprises approximately 16 percent of the total 9,190 occupied housing units in the Township.¹⁰ Hometown asserts that, as of July 31, 2002, it served ten households in West Milford Township, which produces a penetration rate of less than 0.11 percent.¹¹ Hometown states that it expects to provide cable service to less than 30 percent of households in West Milford Township for the foreseeable future.¹²

5. Pursuant to a franchise agreement executed with the Village of Warwick and a Certificate of Confirmation granted by the New York Public Service Commission ("PSC"), Hometown is also authorized to provide cable service throughout the Village of Warwick.¹³ Hometown is required to be capable of serving its PSA within the Village by the end of 2003.¹⁴ Hometown asserts that this PSA encompasses approximately 76 percent of the 2,523 households in the Village.¹⁵ As of July 31, 2002, Hometown served 4 households in the Village, equaling a penetration rate of 0.16 percent.¹⁶ Hometown again states that it expects to continue to serve less than 30 percent of the households in the Village for the

⁵ See 47 U.S.C. § 543(l)(1)(A)-(D).

⁶ See 47 U.S.C. § 543(l)(1)(A); 47 C.F.R. § 76.905(b)(l).

⁷ See 47 C.F.R. § 76.905.

⁸ Petition at 3.

⁹ *Id.*

¹⁰ *Id.* The Commission has stated that, for effective competition purposes, the term "households" has the same meaning as that used by the U.S. Census Bureau. See, e.g., *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 9 FCC Rcd 4316, 4324 (1994). The U.S. Census Bureau defines households as "[a] person or group of persons who live in a housing unit" or "occupied housing units." See <www.census.gov/dmd/www/glossary.html>. Hometown's West Milford Township occupied housing unit data is taken from the 2000 Census. See Petition at 3 n.6.

¹¹ Petition at 3.

¹² *Id.* at 3-4.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 4 n.8.

¹⁶ *Id.* at 4-5.

foreseeable future. Finally, Hometown was recently granted a Certificate of Confirmation by the NY PSC which authorizes the operator to provide cable service pursuant to its franchise with the Village of Florida.¹⁷ As with the Village of Warwick, Hometown must serve a PSA covering approximately 76 percent of the 974 occupied housing units in Florida by the end of 2003.¹⁸ Hometown does not yet have any subscribers within the Village. Based on the record in this proceeding, Hometown is subject to low penetration effective competition in its West Milford, New Jersey franchise area and its Warwick and Florida, New York franchise areas.

III. ORDERING CLAUSE

6. Accordingly, **IT IS ORDERED**, pursuant to authority delegated under Section 0.283 of the Commission's rules,¹⁹ that the captioned petition for a determination of effective competition filed by Hometown Online, Inc. **IS HEREBY GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁷ *Id.*; see also November 20, 2002 Supplemental Filing.

¹⁸ Petition at 5.

¹⁹ 47 C.F.R. § 0.283.